

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSHUA PHILLIPS,)
510 E. 84th St. #4C)
New York, NY 10028,)
vs.)
PLAINTIFF,) Civil Action No. _____
vs.)
DEPARTMENT OF HOMELAND)
SECURITY)
245 Murray Lane, SW)
Washington, DC 20528,)
vs.)
DEFENDANT.)
vs.)
_____)

COMPLAINT

THE PARTIES

1. Joshua Phillips is a resident of the city and state of New York.
2. Joshua Phillips is an award-winning investigative reporter, foreign correspondent, producer and freelance journalist. He focuses on human rights, national security, politics, the United States military and terrorism. His reporting has been published in the *Washington Post*, *Newsweek*, *The Atlantic*, *The Nation*, *Salon*, *the San Francisco Chronicle*, *the Atlanta Journal-Constitution*, *ProPublica*, *The Center for Investigative Reporting*, and the German television news program *ARD (Arbeitsgemeinschaft de öffentlich-rechtlichen Rundfunkanstalten der BRD)*. among others. He has produced broadcast features for radio and television that have appeared on *NPR*, *BBC* and *Al Jazeera*. He is author of the book “None of Us Were Like This Before” and holds a Master of Science in Journalism from Columbia University.
3. The Department of Homeland Security (“DHS”) is an agency of the U.S. government.
4. The Office of Intelligence and Analysis (“I&A”) is an office within DHS.

5. The Office of Community Partnerships (“OCP”) is an office within DHS.
6. The Science and Technology Directorate (“S&T”) is an office within DHS.
7. The DHS Office of the Inspector General (“OIG”) is an office within DHS.
8. The Office for State and Local Law Enforcement (“OSLLE”) is an office within DHS.
9. The Office of Terrorism Prevention Partnerships (“OTPP”) is an office within DHS.
10. The Office of the Secretary of Homeland Security (“OSHS”) is an office within DHS.
11. The DHS Office of the General Counsel (“OGC”) is an office within DHS.
12. DHS, I&A, OCP, S&T, OIG, OSLLE, OTPP, OSOS and OGC have possession, custody and control of the records sought by Plaintiff.

JURISDICTION AND VENUE

13. This action arises under the Freedom of Information Act (“FOIA”), 5 USC § 552.
14. This Court has jurisdiction over the parties and subject matter pursuant to 5 USC § 552(a)(4)(B).
15. Venue is proper in this district pursuant to 5 USC § 552(a)(4)(B).

STATEMENT OF FACTS

16. On February 24, 2019, Plaintiff submitted three related FOIA requests to Defendant DHS, including certain DHS offices, for certain records regarding domestic terrorism in the United States. More specifically Plaintiff’s requests seek records regarding the Domestic Terrorism National Intel Estimate (“DT-NIE”), the Domestic Terrorism Threat Assessment (“DT-TA”) and any other reports that discuss the threat of domestic terrorism related to the

United States. In addition to providing the specific names of documents sought, Plaintiff's requests included specific DHS offices and records systems to be searched.

17. Plaintiff submitted his first of three February 24, 2019 requests to OIG and OGC. See

Exhibit A. Therein, Plaintiff requested expedited treatment of this request and a fee waiver. **Id.**

18. Defendant's formal response to this first request was due twenty business days after it received this request. Defendant's formal response was therefore due on or around March 22, 2019. To date, Plaintiff has not received a formal response to this first request.

19. Plaintiff submitted his second of three February 24, 2019 requests for such records to I&A, OCP, S&T, OSLLE, OTPP, OGC, OSHS and OIG. See **Exhibit B.** Therein, Plaintiff requested expedited treatment of this request and a fee waiver. **Id.**

20. Defendant's formal response to this second request was due twenty business days after it received the request. Defendant's formal response was therefore due on or around March 22, 2019. To date, Plaintiff has not received a formal response to this second request.

21. Plaintiff submitted his third February 24, 2019 request for such records to I&A, OCP, S&T, OSLLE and OTPP. See **Exhibit C.** Therein, Plaintiff requested expedited treatment of this request and a fee waiver. **Id.**

22. Defendant's formal response to this third request was due twenty business days after it received this request. Defendant's formal response was therefore due on or around March 22, 2019. To date, Plaintiff has not received a formal response to this third request.

23. On March 14, Plaintiff received an email from a Government Information Specialist within I&A asking Plaintiff to refine and limit the scope of his request. According to the subject line of the email, at least one of the three requests was assigned 2019-IAFO-00084. This email

did not contain any decision on Plaintiff's requests for expedited processing or his requests for a fee waiver.

24. On April 25, 2019, Defendant sent a second email to Plaintiff again asking him to refine and limit the scope of one of his three requests. Defendant stated the agency will close the case administratively if Plaintiff does not refine and limit the scope of his request. Each of Plaintiff's requests contained the specific titles of documents sought and the specific records systems to search.

25. On May 2, Plaintiff agreed via email to refine the scope of the request. Plaintiff offered language to that effect. Plaintiff also offered to further cooperate with Defendant in order to process his request.

26. Plaintiff has received no further communications from Defendant regarding any of his three requests, nor has he received any formal responses.

COUNT I:
VIOLATION OF FOIA

27. This Count realleges and incorporates by reference all of the preceding paragraphs.

28. All documents referenced in and attached to this Complaint are incorporated by reference as if set forth fully herein.

29. Defendant has violated FOIA by failing to timely respond with records responsive to Plaintiff's three February 24, 2019 FOIA requests as described herein.

30. Defendant has improperly withheld responsive records in violation of FOIA.

31. Plaintiff is and continues to be irreparably harmed until Defendant produces the records requested by Plaintiff.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

- (1) Declare Defendants' failures to comply with FOIA to be unlawful;
- (2) Order Defendants to grant Plaintiff's requests for fee waivers;
- (3) Order Defendants to immediately process Plaintiffs' FOIA requests;
- (4) Grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC § 552(a)(4)(E)(i);
- (5) Grant Plaintiff such other and further relief which the Court deems proper.

Dated: July 1, 2019.

Respectfully Submitted,

/s/ Joseph Creed Kelly
Joseph Creed Kelly [DC 980286]
Law Office of Joseph Creed Kelly
1712 Eye Street NW
Suite 915
Washington, DC 20006
Ph/Fx: (202) 540-9021
jck@jcklegal.com

Counsel for Plaintiff Joshua Phillips